

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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February 28, 2006

James Reed, Labor Compliance Officer
P.E.C.M.
P.O. Box 9268
Redlands, CA 92375

Re: Public Works Case No. 2005-018
Installation and Removal of Temporary Fencing and Power and
Communications Facilities/Eastside High School
Antelope Valley Union High School District

Dear Mr. Reed:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the installation and removal of temporary fencing and temporary power and communications facilities at the Eastside High School construction site is public work subject to the payment of prevailing wages.

Facts

On December 26, 2004, the Antelope Valley Union High School District ("School District") advertised for bid the first general construction contract to be awarded for Phase I construction of Eastside High School, a new public high school in the City of Lancaster. On February 2, 2005, School District awarded the \$9.180 million contract to Fedcon General Contractors, Inc. ("Contractor"). The school construction is being paid for with funds from the State School Facility Program and proceeds from the sale of local general obligation bonds. As a subcontractor on Phase I, S & S Rent-a-Fence, Inc. d/b/a S & S Construction Services ("Subcontractor") was responsible for installation and removal of temporary perimeter fencing and temporary power and communications facilities at the construction site and performed this work for Contractor on a purchase order and invoicing basis. Subcontractor sank fence posts into the ground and erected a six-foot high temporary chain link fence around the perimeter of the construction site. Subcontractor also dug holes, sank poles into the ground, and ran overhead lines for the provision of electric power and telephone communications to the construction site. Subcontractor will remove the fencing and power and communications facilities as the progress of the school construction allows. The work performed by Subcontractor is the subject of this determination.

Discussion

Under Labor Code section 1720(a)(1),¹ a public work is defined in pertinent part as: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction" Section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." Sections 1771 and 1774 have similar requirements.

The parties do not dispute that the school construction itself is a public work requiring the payment of prevailing wages. The work performed by Subcontractor is work done under contract in the form of purchase orders and invoices and paid for in whole or in part out of public funds. The issue presented here is whether the installation and removal of temporary fencing and temporary power and communications facilities falls within one or more of the types of covered work enumerated in section 1720(a)(1) or is otherwise subject to prevailing wage requirements under sections 1771, 1772, or 1774.

Section 1720(a)(1) was amended in 2000 to expand the definition of a public work to include work performed during the "preconstruction phases of construction" (Stats 2000, Chap. 881 (SB 1999), section 1, effective January 1, 2001). Section 1720(a)(1) was amended again in 2001 to include "installation" within the definition of a public work (Stats 2001, Chap. 938 (SB 975), section 2, effective January 1, 2002). These amendments leave no doubt that the work performed by Subcontractor in erecting the fencing and the power and communications facilities at the school construction site falls within the type of covered work contemplated by section 1720(a)(1). To the extent this work is seen as part of the preconstruction activities, it constitutes "work performed during the design and preconstruction phases of construction." To the extent this work is seen as part of the construction activities, building a fence and power and communications facilities constitutes "construction." It also constitutes "installation" because the fencing and power and communications facilities are affixed to the property through the securing of the poles to the ground in dug-out holes.

As to the removal of the fencing and the power and communications facilities, this work constitutes "demolition," which is defined as the tearing down of that which has been previously constructed.

¹All statutory references are to the California Labor Code, unless otherwise indicated.

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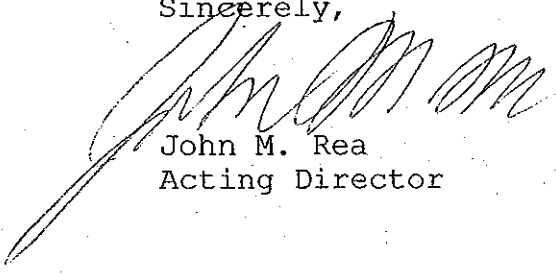
See *Priest v. Housing Authority of the City of Oxnard* (1969) 275 Cal.App.2d 751, 756. The removal of the fencing and power and communications facilities is also subject to prevailing wage requirements under sections 1771, 1772, and 1774 as it is being performed as part of the construction process.

Contractor argues that Subcontractor's work is not a public work because it does not contribute a capital improvement to School District. Whether the temporary fencing and temporary power and communications facilities amount to separate capital improvements is not a factor in this determination. If the work meets the three elements of a public work under section 1720(a)(1) or is otherwise subject to prevailing wage requirements under sections 1771, 1772, or 1774, the payment of prevailing wages is required.

These conclusions are further supported by past precedential determinations. In PW 99-012, *Caltrans, San Diego Border Patrol and California Highway Patrol Facility, Installation of Fencing, National Fence* (September 23, 1989), the erection of a temporary fence around a Border Patrol and California Highway Patrol facility reconstruction site was found to be work covered under former section 1720(a) as "construction" and work done in execution of a contract for public work of reconstruction under section 1772. In PW 94-002, *Comcast, Inc. Contract with City of Los Angeles* (July 21, 1995), the installation of telephone cables and wiring was found to be within the meaning of "construction" under former section 1720(a). Accordingly, Subcontractor's work of installing and removing temporary fencing and temporary power and communications facilities is public work for which prevailing wages are required to be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director